IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12/03/2003

CORAM

THE HON'BLE MR.JUSTICE E.PADMANABHAN

Writ Petition No. 19271 of 1997
and
WMP.No. 30227 of 1997

R.Kalyanasundaram ..petitioner

-Vs-

1.The Managing Director
Tamilnadu State Transport Corporation
Ltd., (Kumbakonam Division-II)
Periyamilagupparai, Trichy-1

2.The District Employment Officer
(Technical)
District Employment Office
Trichy-17 ..Respondents

Writ Petition preferred under Art.226 of The Constitution of India
seeking for a writ of certiorarified mandamus, as stated therein.

For petitioner :: Mr.S.Sathiamurthi

For respondents:: Ms.V.Velumani, AGP for R.2
Mr.R.Mohanakrishnanr for R.1

:O R D E R

The writ petitioner prays for the issue of a writ of certiorarified mandamus calling for the records of the first respondent in Ref.No. TNSTC (Kmu.Div.2)/L4/5744/97, dated 24.9.1997, quash the same and direct the second respondent to send the petitioner's name for the Fitter Post.

2. Heard Mr.Sathiamurthi, learned counsel appearing for the petitioner, Mr.G.Mohanakumar for M/s.Vijayanarayan, for the first respondent and Ms.V.Velumani, Additional Government Pleader, appearing for the second respondent. With the consent of counsel on either side, the writ petition itself is taken up for final disposal.

3. The petitioner, who has passed ITI Fitter Trade completed his

Apprenticeship in Fitter Training course in Thanthai Periyar Transport Corporation between 14.12.1987 and 13.12.1988. The petitioner registered himself with the second respondent-Employment Exchange on 22 .10.1987. His Registration Number being 3320/87. On 22.10.1987 the petitioner also registered his completing "Apprenticeship" with the second respondent Employment Exchange. The petitioner transferred his registration to Cuddalore District Employment Exchange for a short while and subsequently got it transferred to the file of the second respondent herein.

4. During 1987, the first respondent called for a nominations from the second respondent Employment Exchange for the post of Fitter. The first respondent has called upon the second respondent to sponsor those persons who underwent Apprenticeship Training in the then Dheeran Chinnamalai Transport Corporation. The second respondent has sponsored candidates who completed the "Apprenticeship" in the said Corporation. The Corporations have been divided into various units. The petitioner stats that persons who have completed three year course and underwent Apprenticeship and registered themselves with the Employment Exchange till 1995 have been called for Interview, while the petitioner who has registered himself with the Employment Exchange as early as 1987 has not been sponsored by the second respondentemployment Exchange.

5. It is contended that the action of the first respondent in insisting that ITI Fitters, who had undergone Apprenticeship Training in their undertaking, alone should be sponsored is illegal, arbitrary, violative of Art.14 and 16. The action of the second respondent in not sponsoring the name of the petitioner, though he has registered himself during the year 1987 and much earlier to many of those who have been sponsored by it, is illegal arbitrary and unconstitutional. Hence, the petitioner has approached this court after making representations.

6. The petitioner further states that other candidates were called for Interview by the first respondent on 8.9.197 while he has not been called for Interview. The petitioner made representation to the State Government in particular to the Chief Minister's Cell and the first respondent has kept the appointment in abeyance. In the light of the said facts the above writ petition has been moved.

7. The first respondent filed a counter stating that as per G.O.Ms.No:2383 dated 2.11.1988. The Employment Exchange forwarded 67 names by its letter dated 22.7.1997. The first respondent sent call letters for interview. The petitioner's name was not sponsored by the Employment Exchange. Therefore no call letter was sent to the petitioner. Hence the petitioner was not considered for appointment. The contention that there is no impediment for a trademan like Fitter who has gone Apprenticeship in any other establishment or Corporation and is eligible to be sponsored and considered for appointment. The allegation to the contra raised have been denied by the first respondent. G.O.2382 dated 2.11.1988 directed that vacancies arising in the establishment should be filled up by the apprentices trained by the same establishment and therefore the first respondent has required the second respondent to sponsor the candidates for the post of Fitter from among those who have completed the apprenticeship in the first

respondent establishment.

8. It is further contended that such an action is not discriminatory, nor it is illegal nor it is unconstitutional. The first respondent has acted in terms of the Government directions and such an action is neither illegal, nor unconstitutional. It is also stated by the first respondent that interview was conducted and all the Fitter posts have been filled up and there is no vacancy in the post of Fitter at present. The petitioner is not entitled to any relief.

9. The second respondent has filed a counter stating that the petitioner has registered with the second respondent Employment Exchange with qualifications namely National Trade Certificate for Fitter and National Council for Vocational Training for Apprenticeship Training underwent in the Thanthai Periyar Transport Corporation, Vridhachalam, besides recording his Driving Licence are admitted. The petitioner's date of birth and his social status have been rightly recorded.

10. The General Manager, Dheeran Chinnamalai Transport Corporation notified 10 vacancies of Craftsman (Temporary) Fitter, namely SCNon-Priority 2, O.C.Priority-1, OC.Non-Priority-7 with the following qualifications:-

1. A pass in SSLC
2. A Pass in National Trade Certificate in Fitter
3. Possession of National Apprenticeship Certificate after undergoing Apprenticeship Training in Dheeran Chinnamalai Transport Corporation, Trichy only.

As the first respondent has issued a specific direction, the petitioner's name could not be sponsored while others who are all eligible were sponsored or nominated for Interview.

11. It is admitted that the petitioner has registered himself with the Employment Exchange on 22.10.1987 itself and as per the requisition it is pointed out that as the petitioner is not possessed of the required qualification namely National Apprenticeship Certificate in Dheeran Chinnamalai Transport Corporation, his name was not sponsored or for the said post in Dheeran Chinnamalai Transport Corporation. Though the petitioner transferred his registration to some other District, but subsequently he got himself transferred to the Villupuram Employment Exchange and subsequently got transferred to Trichirappalli. The second respondent sponsored the name of all those who satisfy the requirement or qualifications prescribed against the notified vacancy. In the circumstances, the petitioner's name was not sponsored. The second respondent prayed for dismissal of the writ petition.

12. The points that arise for consideration are:
(A) Whether the first respondent could insist that persons who have undergone the Apprenticeship Training with the first respondent Corporation alone are eligible to be called for and appointed in the first respondent-Corporation?
(B) Whether exclusion of candidates who have undergone apprentice

with other establishments by the first respondent is violative of Art.14 and 16 of The Constitution?
(C.) Whether the non sponsoring of the petitioner by the second respondent and exclusion by the first respondent for the post of Fitter who possess all the qualification and when he has registered himself at the earliest opportunity is illegal and violative of Art.14 and 16?
(D) To what relief, if any, the petitioner is entitled to?

13. There is no controversy that the petitioner is qualified for being appointed to the post of Fitter as he has completed the National Trade Certificate in Fitter, besides he has also completed the apprenticeship in a State Transport Undertaking. The petitioner has not been sponsored by the second respondent since the first respondent directed that candidates who have undergone the apprenticeship in the first respondent-Corporation alone be sponsored. This is being pointed out as an illegality and violating the petitioner's fundamental rights, besides being arbitrary.

14. Though the respondents rely upon the Government Order such an order cannot be a ground or reason to exclude the petitioner. When the petitioner is possessed of the qualifications and when the petitioner has registered himself at the earliest and long prior to other candidates, who were sponsored, there is no reason at all to exclude the petitioner from consideration. The Government Order being relied upon by both the respondents results in exclusion of the petitioner from being considered though he has registered himself with the Employment Exchange earlier in point of time to other candidates sponsored by the second respondent as well as called for interview and selected by the first respondent. This offends Art.14 and 16 of The Constitution. NO rule has been placed by the first respondent-Corporation that only those who have undergone the apprenticeship in that Corporation alone are eligible to be appointed and others are not eligible to be appointed.

15. The National Trade Certificate is common and after acquiring the National Trade Certificate the individual undergoes apprenticeship Training under in any one of the establishments to which the Director of Employment deputes candidates.

16. There cannot be any differentiation or discrimination in this respect. There is no quarrel that the petitioner has registered himself with the second respondent-Employment Exchange earlier in point of time to those who have been called for interview and selected. There is no quarrel that the petitioner is possessed of all the qualification prescribed under the Rules/Standing Orders by the first respondent-Corporation. Yet the petitioner has been excluded from consideration or denied of an opportunity to compete in the selection solely on the reason that he has undergone apprenticeship in some other Transport Corporation and not with the first respondent State Transport Corporation. Further there is no provision or standing order or service regulation providing priority for those individuals who have under gone apprenticeship Training in the first respondent Corporation. Even if there is such a condition, the same cannot be saved at all as it is violative of Art.14 and 16.

17. An identical question arose before this Court in W.A.No.375, 3
76, 477, 666 to 676 of 1995 etc., batch (P.Arul and 237 others Vs. TNEB).
The Division Bench by judgement dated 20.9.1995 held that persons who have undergone apprenticeship Training with the TNEB claim priority in the employment in respect of vacancies that arose in the Electricity Board and the Division Bench sustained the claim of such apprentices while setting aside the judgement of the Single Judge. In the said judgement the respondents relied upon a Government Order G.O.Ms.No.1151, Labour and Employment dated 18.7.1979. The G.O., which is being relied upon by the respondent in this writ petition is identical to the said G.O. Though the Division Bench sustained the claim of apprentice-trainees, namely, priority in appointment, the Apex Court in Civil Appeal Nos.5285 to 5328 of 1996 preferred by the Tamil Nadu Electricity Board, reversed the Division Bench Judgement and laid down that apprentices-trainees have no such right of priority for being appointed in preference to other applicants who underwent apprenticeship in different establishment. In this respect, the Apex Court held thus:-
"This court has therefore clearly laid down that Apprentices/ Trainees shall have to go through the process of selection provided under the Service Regulations/Rules. Keeping in view the fact that the Apprentices acquire training under the same management, they are not required to sit in the written test but in a selection where viva voce test is also provided, it would be necessary for the Apprentices to go through the process of viva voce. This court has specifically laid down that a trained apprentice should be given preference other things being equal over direct recruits. In a given case an Engineering Graduate may be preferred to a diploma holder apprentice. It depends on the Selection Committee and also the Regulations/Rules governing the selection.

We are of the view that this court has clearly laid down that the Apprentice-Trainees have no right to be appointed in preference to other applicants.
The Division Bench of the High Court based its findings on the following reasoning:
"On a careful analysis of the directions and guidelines issued by the Supreme Court we are of the view that their Lordship of the Supreme Court do not appear to have subscribed to the idea of subjecting the apprentices who have successfully completed their training to any other or further selection process except satisfying the norms formulated in paragraph 12 and the person concerned being so absorbed and appointed thereafter according to the inter-se-seniority reckoned with reference to the formula No.(4) of para 12 of the decision in 1995 (1) SCC 1 viz., yearwise seniority and among them as per inter-se seniority".

We are of the view that the High Court fall into patent error. After indicating the four benefits to which the apprentice trainees would be entitled during the process of selection, this court in para 13 has in clear terms stated that the trainees shall have to go through the process of selection provided under the Service Regulations/ Rules. In the present case, the Board Regulations specifically provide that the Post of Technical Assistant is to be filled by way of selection. All the applicants including the apprentices are, therefore, required to go through the process of

selection provided under the Regulations. This has not been done in the present case and the Division Bench of the High Court has directed the Board to appoint the respondents on preferential basis and without going through the selection process.

Before parting with this order, we make it clear that this court has in U.P.State Road Transport's case (supra) interpreted the provisions of the Act. All instructions issued by the Central Government or by the State Government in this respect shall have to be read in conformity with the law laid down by this court.
Mr.Parekh, learned counsel for the Board, has informed us that the interviews in this case were held in September, 1994. It is thus obvious that the interviews were held before this court delivered the judgement in U.P.State Road Transport's case. Even otherwise, it would not be appropriate to make appointments based on an interview, which was held more than two years back. We, therefore, direct the Board to readvertise the posts. The fresh applicants along with the old applicants including the apprentices shall be considered afresh by following the selection procedure envisaged under the Regulations. The Board shall complete the process of selection within four months."

The above pronouncement of the Apex Court squarely applies to the facts of the present case and on all fours.

19. The learned counsel appearing for the first respondent relied upon the pronouncement of the Supreme Court in U.P. State Road Transport Corporation and another Vs. U.P.Parivahan Nigam Shishukhs Berozgar Sangh & Others, reported in 1995 (II) LLJ 854 and contended that there could be a preference. This contention cannot be sustained as the very judgement in U.P. State Road Transport Corporation and another Vs. U.P.Parivahan Nigam Shishukhs Berozgar Sangh & Others, has been explained by the Supreme Court in TNEB Vs. P.Arul and others in Civil Appeal Nos. 5285 to 5328 of 1996. Being a latter pronouncement on the point, the same applies. The reliance placed upon the G.O cannot be sustained in view of the above pronouncement.

20. It may not be necessary to refer to any other pronouncement in the light of the said pronouncement of the Apex Court in TNEB Vs. P.Arul and others. The contention advanced by the counsel for the writ petition deserves to be sustained and the contention to the contra advanced by the counsel for the respondents 1 and 2 cannot be countenanced. The points A to C are answered in favour of the petitioner and against respondents.

21. Though the contention advanced by the petitioner is sustained, since the selection has been completed by the first respondent and posts have been filled up, this court in the absence of persons who have been selected and appointed having not been impleaded, is not in a position to give appropriate relief. Had the persons selected and appointed been impleaded as parties, this court would have issued a direction to set aside the selection and directed the respondents to hold a fresh selection. Such a course could not be adopted as the persons selected and appointed are not before this court and this court will not be justified in issuing a direction setting aside the

selection and directing the respondent to hold de novo selection.

22. In the circumstances, to render substantial justice, there will be a direction to the second respondent to sponsor the petitioner's name for the post of Fitters in the first respondent Corporation or any other State Undertaking or any ot establishment, where for the trade of Fitters the requisition is made to the second respondent to sponsor the candidate with the qualification namely National Trade Certificate as well as completion of Apprenticeship and for such future vacancies, the first respondent shall give priority to the petitioner, and if necessary, also relax the rule relating to age, if any.

23. The writ petition is allowed with the above directions. Consequently, connected WMP is closed. The parties shall bear their respective costs.

Index:Yes
Internet:Yes

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To

1.The Managing Director
Tamilnadu State Transport Corporation
Ltd., (Kumbakonam Division-II)
Periyamilagupparai, Trichy-1

2.The District Employment Officer
(Technical)
District Employment Office
Trichy-17